

CITY OF SAN JOSÉ, CALIFORNIA
Redevelopment Agency of the City of San Jose
50 W. San Fernando Street, Suite 1100
San José, California 95110

STAFF REPORT

Hearing Date/Agenda Number
PC Agenda: 7-03 Item: 3.c.

File Number
RCP03-015

Application Type
Conditional Use Permit

Council District
3

Planning Area
Downtown Core

Assessor's Parcel Number(s)
467-46-045

PROJECT DESCRIPTION

Completed by: Amie Glaser

Location: 380 South First Street

Gross Acreage: 0.07

Net Acreage: N/A

Net Density: n/a

Existing Zoning: CG

Existing Use: Commercial, Vacant

Proposed Zoning: n/a

Proposed Use: Drinking establishment with live entertainment, and after midnight operation.

GENERAL PLAN

Completed by: AG

Land Use/Transportation Diagram Designation
Core Area

Project Conformance: ☒ Yes ☐ No
☒ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: AG

North: Commercial Building, Restaurant

CG (Commercial General)

East: Parking Lot

CG (Commercial General)

South: Commercial - Retail

CG (Commercial General)

West: Commercial Retail and Drinking Establishments

CG (Commercial General)

ENVIRONMENTAL STATUS

Completed by: AG

☒ Environmental Impact Report found complete on April 27, 1999
☐ Negative Declaration circulated on

☐ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: AG

Annexation Title: Original City

Date: n/a

HISTORIC STATUS: Not Historic

Completed by: AG

REDEVELOPMENT AGENCY RECOMMENDATIONS AND ACTION

☐ Approval
☒ Approval with Conditions

Date: 7/9/03

Approved by: _____

Approved by: _____
☐ Action ☐ Recommendation

APPLICANT

OWNER

Menassa Abinader
4 Cazid Circle
Redwood City, CA 94063

Stella De La Rosa
164 North Bascomb Ave.
San Jose, CA 95128

Completed by: AG

Department of Public Works

See Conditions of Approval

Other Departments and Agencies

Police Department, see Conditions of Approval

GENERAL CORRESPONDENCE

None Received

ANALYSIS AND RECOMMENDATIONS

PROJECT DESCRIPTION

The applicant requests to open a public drinking establishment (bar) and entertainment establishment (d.b.a. B-Hive). The Conditional Use Permit (CUP) will allow after-midnight operation of the facility, until 2:00 AM, daily, including live music. The project site is located at 380 South First Street and is in the Commercial General (CG) Zoning District. A CUP is required in the CG Zoning District for entertainment establishments commercial use operating after midnight and the playing of live music beyond 10:00 PM. No new square footage is being added as a part of the application.

The B-Hive nightclub and bar is currently located at 372 South First Street. The Police Department corroborates the fact that it has operated safely at its current location for many years. (see the attached memo from the Police Department). This new location will give them a street frontage and more visibility. The B-Hive currently operates on the second floor above Eulipia restaurant at 372 South First Street

The 0.70-acre project site is developed with an existing commercial building currently divided into two tenant spaces, both of which are currently vacant. Granting the CUP will allow the existing structure to be used as a drinking establishment with live entertainment. The hours of operation of the facility will be permitted from 10:00 AM to 2:00 AM, daily. The project site is situated amid a variety of commercial uses and abuts its current location, above Eulipia restaurant at 372 South First Street, to the north. A parking lot is located to the east and various retail uses are located to the south and west. Approval of the CUP will allow the facility to operate as a drinking establishment and entertainment establishment until 2:00 AM, daily.

GENERAL PLAN CONFORMANCE

The project site is designated Core Area on the San Jose 2020 Land Use/Transportation Diagram. This designation allows a range of “office, retail, service, residential, and entertainment uses in the Downtown Core Area.” More specifically, late night, entertainment-oriented uses, such as bars and nightclubs, are encouraged to locate in the Core Area rather than in other less appropriate areas of the City so long as they do not impact neighboring uses. Given the project’s location, the proposed use is consistent with the General Plan and the Core Area designation.

The project is also consistent with the *Strategy 2000* goals for the Downtown Core, in that the plan states that entertainment uses, restaurants, and late night activity can appropriately locate in the Downtown Core. The proposed bar and nightclub use will bring activity to the Downtown Core consistent with the *Strategy 2000* Plan.

ENVIRONMENTAL REVIEW

Pursuant to Section 15180 of the 2001 CEQA Guidelines, the City of San Jose has determined that the project will not create new significant environmental impacts beyond those analyzed in the Final Supplemental Environmental Impact Report (SEIR) entitled "Downtown Strategy Plan" certified by City Council Resolution No. 68839 on April 27, 1999.

ANALYSIS

Through the subject CUP, the applicant proposes to operate a drinking establishment with live entertainment, which would be allowed from 10:00 AM and 2:00 AM, daily. Such uses are subject to the City Council's 24-hour Use Policy, Guidelines for Evaluation of Nightclubs and Bars and the City's Zoning Ordinance. The objective of these policies and ordinances is to ensure that late-night uses, particularly bars and nightclubs, are compatible with surrounding land uses. A key provision of these policies is to ensure that entertainment and after-midnight uses not be approved unless the facilities can operate without detriment to nearby residential uses and the general welfare of the surrounding area. The following issues address the project's operational compatibility within its surroundings.

Guidelines for Evaluation of Nightclubs and Bars

The proposed uses will be limited in operation to no later than 2:00 AM, with alcohol sales terminating at 1:30 AM. These provisions are consistent with the Guidelines for Evaluation of Nightclubs and Bars, which apply to after-midnight uses within the Downtown; in that restaurants, cafés and other commercial uses are encouraged where they can operate without detriment to nearby residential uses or the general welfare of the surrounding area. The proposed project complies with the Guidelines for Evaluation of Nightclubs and Bars because the conditions applied to the CUP will ensure that the project complies with the Noise Ordinance, with garbage and litter pick up requirements, and with age restrictions for the service of alcohol. Failure to comply with the conditions could result in the revocation of the CUP by the Planning Commission.

In addition, the project site is located in the South of First Area (SoFA). The SoFA has been specifically identified as an entertainment zone by the *Strategy 2000* plan, which guides development for the Downtown Core. The Police Department has indicated that the proposed use at the proposed location will not result in additional impact on police services.

Land Use Compatibility

Commercial land uses and structures surround the project site: retail uses to the south and north, a parking lot to the east, and drinking establishments and retail to the west. There are 13 residential loft units across the street from the proposed project's location. The B-Hive at its new location should not negatively impact the residential units because the nightclub must meet the requirements of the Noise Ordinance.

Conditions have been placed upon the operation of the B-Hive regarding queuing and security which will minimize impacts upon neighboring businesses and

In addition, there are several nightclubs closer to the residential units than the B-Hive will be (including the Agenda, and Pollyesthers). Those residential units were notified of the CUP hearing as a part of this application and they have an opportunity to comment on the application. The B-Hive has been operating without problems at its current location at 374 South First, a move to the new tenant space next door is not expected to cause additional impacts.

Based on the composition of surrounding uses, the subject property is well suited for after-midnight entertainment uses. Moreover, the proposed use has been reviewed by the Police Department and acceptable operational practices have been identified in the conditions of approval that will minimize any impacts this project could potentially have on surrounding residential units. The B-Hive has been operating without incident and moving to the new location is not expected to cause Police problems.

Compliance with Zoning Code Parking Requirements

The project site is located in the Downtown Parking Management Zone (SJMC 20.90.500), which establishes the parking requirements for the downtown (SJMC 20.90.500). Based on the proposed eating and entertainment establishment uses, onsite parking is not required. Adequate parking will be provided by public parking lots and on street parking in the vicinity.

Public Outreach

Notice of the proposed project was circulated to properties within 300 feet of the subject property.

CONCLUSION

Based on the above analysis, staff concludes that the proposed project is in conformance with the requirements of the Zoning Ordinance, parking requirements, and the City Council 24-hour Use and Bar and Nightclub Policies, and that the proposed use is compatible with its surroundings.

FACTS

Agency staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission determines that the following are the relevant facts regarding the proposed project:

1. This is a Conditional Use Permit (CUP) to operate a drinking establishment with live entertainment and after-midnight operations, between the hours of 10:00 AM and 2:00 AM, daily.
2. The project site is approximately 0.07 acres and is located in the Commercial General (CG) Zoning District.
3. A Conditional Use Permit is required for the operation of a drinking and entertainment establishment, with after midnight use in the CG Zoning District.

4. The Zoning Ordinance 20.40.500 requires that any establishment, other than office uses, in any Commercial District, obtain a CUP in order to operate between the hours of 12:00 AM and 6:00 AM.
5. The project site is designated Core Area on the San Jose 2020 General Plan Land Use/Transportation Diagram.
6. The Core Area designation provides that bars and nightclubs may be located within the downtown Core Area, provided that such uses do not adversely impact existing or planned uses or conflict with other San Jose General Plan objectives.
7. The environmental impacts of this project were addressed by Final Supplemental EIR entitled, "Downtown Strategy Plan," adopted by City Council Resolution No. 68839 on April 27, 1999.
8. The subject site is surrounded by a variety of commercial uses.
9. The subject site is located in the Downtown Parking Management Zone. Based on the parking provisions for the Downtown Parking Management Zone (Municipal Code, Section 20.90.510), parking is not required for eating, drinking, and entertainment establishment.
10. The project is located within the SOFA District and is subject to the *Strategy 2000* plan for the Downtown Core.
11. Adequate security will be provided to maintain safety of the business patrons and residents of the surrounding area.

RECOMMENDATION

This Planning Commission concludes and finds, based upon an analysis of the above facts, that:

1. Upon issuance of this Conditional Use Permit, the project will comply with the provisions of the Commercial General (CG) and Ground Floor Retail (DG) Zoning District in that the operation of a drinking and entertainment establishment; and commercial use between the hours of 12:00 AM and 6:00 AM requires the approval of a Conditional Use Permit.
2. The project conforms to the with the San Jose 2020 General Plan, SOFA Plan, and the *Strategy 2000* Plan, in that it proposes the operation of a drinking and entertainment establishment within the Downtown Core Area.
3. This project is consistent with the City Council Policies on 24-Hour Use and Bars and Nightclubs in that it proposes the operation of a drinking and entertainment establishment, with after midnight use, in an area of downtown predominately developed with commercial land uses.
4. The project conforms to the California Environmental Quality Act in that is does not create impacts not previously addressed in the Downtown Strategy Plan Final Supplemental EIR.
5. The proposed use complies with the parking provisions of Downtown Parking Management Zone, as described in Municipal Code, Section 20.90.500.

FINDINGS

Based upon the above-stated analysis and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area because the proposed entertainment and drinking establishment uses are consistent with the commercial uses of the surrounding area and will not impact residential uses; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site because the proposed restaurant and drinking establishment will not alter or diminish the value of adjacent restaurants or businesses, raise new safety concerns, or create visual impacts; or
 - c. Be detrimental to public health, safety or general welfare because the potential environmental impacts of the project were addressed by the final supplemental environmental impact report entitled, "Downtown Strategy Plan EIR" (Resolution No. 68839) and police reports of past experience in the area corroborate that such use will not adversely affect the public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the development features necessary to integrate said use with the uses in the surrounding area because the project site already includes the improvements needed for the proposed uses which are compatible with the uses in the surrounding area; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate in that the proposed project will not need to provide offsite improvements to the existing roadway network or transit facilities; and
 - b. By other public or private service facilities as are required in that the scale of the project will not necessitate expansion of existing service facilities.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purposes specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of the following conditions. Each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all requirements of the below enumerated precedent conditions all have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. Acceptance and Payment of Recording Fees. Within sixty (60) days from the date of this Resolution, the property owner(s) shall accept this permit by signing the form provided hereto, and paying the fee for its recordation by the Recorder of the County of Santa Clara.
2. Lighting of Site. Lighting shall be installed at the rear of the building to maintain the safety in the parking lot area behind the building.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below enumerated conditions throughout the life of the permit:

1. Water Pollution Control Plant Notice. This Conditional Use Permit is subject to the operation of Part 2.75 of the Chapter 15.12 of Title 15 of the San Jose Municipal Code. The applicant for or recipient of such land use approval hereby acknowledges receipt of notice that the issuance of a building permit to implement such land development approval may be suspended, conditioned or denied where the City Manager has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San Jose or to meet the discharge standards of the sanitary sewer system imposed on the California Regional Water Quality Control Board for the San Francisco Bay Region.
2. Nuisance. This use shall not be operated in a manner that creates a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City or the Redevelopment Agency.
3. Hours of Operation. The hours of operation for the facility will be limited to 10:00 AM to 2:00 AM, daily. Alcohol service and live entertainment will cease at 1:30 AM.
4. Security. A minimum of two security officers shall be on duty for every 100 patrons using the drinking establishment portion of the facility during its hours of operation.
5. Noise and Acoustics.
 - a. During the hours of operation, amplified sound shall be carefully regulated to ensure compatibility with adjacent uses.
 - b. Noise emission shall comply with the policies identified in the Zoning Code.
6. Trash, Refuse, Garbage and Litter.
 - a. Cleaning shall including keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of all exterior walls and sidewalks along the project's frontages.
 - b. Mechanical equipment used for outside maintenance, including blowers and street-sweepers shall not be used between 10:00 PM and 6:00 AM, daily.
 - c. All trash areas, equipment, and containers shall be effectively screened from view and maintained in an orderly state at all times.
 - d. The facility operator shall provide adequate ashtrays along the business frontage to accommodate patrons who wish to smoke outdoors. Patrons smoking outdoors shall not impede pedestrian traffic along the adjacent rights-of-way, nor create a nuisance for adjacent businesses or residents.

8. Patron Parking. The project operator shall identify and publicize to its patrons the location and availability of parking facilities within the vicinity of the project site.
9. Entertainment Permit. The project operator shall obtain and maintain the appropriate Entertainment Permit issued by the City of San Jose Police Department.
10. Age Requirements. Patrons of the nightclub must be 21 years of age to enter.

CONDITIONS SUBSEQUENT

1. Revocation, Suspension, Modification. This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission or by the City Council on appeal, at any time, regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100.350, of the San Jose Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use presently conducted creates a nuisance.
2. Revocation. The Permit does not constitute a deed or grant of an easement by the City and is revocable at any time.
3. Time Limit. This Conditional Use Permit expires and has not further force or effect five (5) years from the date of approval. This permit may be renewed in accordance with condition number five, below. Please note that this conditional use permit has been granted for a period of 5 year(s) only. You are being specifically and separately advised of this time limitation so that you will consider this time limitation in your decision to accept this permit or as you make any investment decision related to this property.
4. Renewal. The permit holder may seek renewal of a time-conditioned Conditional Use Permit by filing a timely renewal application on the form provided by the Executive Director of the Redevelopment Agency. In order to be timely, an application for renewal must be filed more than ninety (90) calendar days but less than one hundred eighty (180) calendar days prior to the expiration of the Conditional Use Permit. Once a renewal application has been filed in a timely manner, the expiration date of the Conditional Use Permit is automatically extended until either the issuance or denial of the application for renewal has become final.